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TOPIC VI.

MEANS OF INJURING THE ENEMY.

Having regard to The Hague conventions, what limits should be imposed upon the means of injuring an enemy, including the use of mines?

CONCLUSION.

Having regard to the regulations adopted at The Hague and to regulations which have seemed to meet wide approval, the following regulations in regard to means of injuring the enemy in maritime war may be suggested:

Means of injuring the enemy—

1. "The right of belligerents to the choice of means of injuring the enemy is not unlimited."

2. It is forbidden—

(a) To employ poison or poisoned weapons or projectiles whose sole object is the diffusion of asphyxiating or deleterious gases.

(b) To employ arms, projectiles, or material of a nature to cause unnecessary suffering.

3. Torpedoes and mines—

(a) It is forbidden to use torpedoes which do not become harmless when they have completed their run.

(b) It is forbidden to lay mines in the high seas except within the immediate area of belligerent operations.

(c) It is forbidden in the high seas and in marginal waters of the belligerent (1) to lay unanchored automatic contact mines, except when they are so constructed as to become harmless one hour at most after those who laid them have lost control of them; (2) to lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings.

(d) A belligerent is forbidden to lay mines off the coast or before the ports of the enemy except for strictly military or naval purposes.

It is forbidden to lay mines in order to establish or to maintain a commercial blockade.

(e) When mines are employed every possible precaution must be taken for the security of peaceful shipping.

The belligerents undertake to provide as far as possible that these mines shall become harmless within a limited time, and, should they cease to be under surveillance, to notify the danger zones as soon as military exigencies permit by a notice to mariners, which must also be communicated to the Governments through the diplomatic channel.

(f) At the close of the war the belligerent states undertake to do their utmost to remove the mines which they have laid, each state removing its own mines.

As regards anchored automatic contact mines laid by one of the belligerents off the coast of the other, their position must be notified to the other party by the state which laid them, and each state must proceed with the least possible delay to remove the mines in its own waters.

The belligerent states upon which the obligation to remove the mines falls after the end of the war should as soon as possible give notice that the mines have so far as possible been removed.

NOTES.

Restrictions on instruments of warfare.—From early days it has been customary for writers and others, from time to time, to propose restriction upon the instruments of warfare, particularly upon the introduction of new instruments. There was opposition to the introduction of the musket in the sixteenth century, and four centuries earlier objection had been raised to projectiles in general. In 1759, even, Admiral Conflans is reported to have ordered his captains not to use shells.

The rules for war on land developed earlier than those for war on the sea. These rules did not develop early, however. The perfecting of a bullet which exploded on contact with a hard substance, in Russia, in 1863, and later of one which would explode on contact with a soft substance led in 1868 to the formation of the Declaration of St. Petersburg. The declaration was the first formal international agreement restricting the means of war. The actual restriction of the use of a specified form of projectile is not now of an importance at all

commensurate with the enunciation of principles of general conduct which are set forth in the declaration:

On the proposition of the imperial cabinet of Russia an international military commission having assembled at St. Petersburg in order to examine into the expediency of forbidding the use of certain projectiles in time of war between civilized nations, and that commission having by common agreement fixed the technical limits at which the necessities of war ought to yield to the requirements of humanity, the undersigned are authorized by the orders of their Governments to declare as follows:

Considering that the progress of civilization should have the effect of alleviating as much as possible the calamities of war;

That the only legitimate object which states should endeavor to accomplish during war is to weaken the military forces of the enemy;

That for this purpose it is sufficient to disable the greatest possible number of men;

That this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men or render their death inevitable;

That the employment of such arms would, therefore, be contrary to the laws of humanity;

The contracting parties engage mutually to renounce, in case of war among themselves, the employment by their military or naval troops of any projectile of a weight below 400 grams which is either explosive or charged with fulminating or inflammable substances.

The states parties to this declaration also gave evidence that they might endeavor by later concerted action "to maintain the principles which they have established," and endeavor "to conciliate the necessities of war with the laws of humanity."

An attempt to establish rules in regard to the treatment of prisoners of war and other matters in 1874 did not meet with general approval. The Geneva convention of 1864, in regard to the treatment of the wounded of armies in the field, was, however, generally accepted. During the wars of 1866 and of 1870 in Europe various statements were made that one or another party was conducting the war without regard to recognition of the principles of civilized warfare, but as there was no agreement as to what these principles were, it was impossible to establish or controvert the statements. There was a

general acknowledgment that the principles of the Geneva convention and of the declaration of St. Petersburg should be observed.

Gradually there was formulated in different states codes of laws for use in time of war, similar in some respects to Lieber's Code of 1863 in the United States. Attempts to formulate such codes by international agreement followed the establishment of the Institute of International Law in 1873. The Brussels Manual of 1874 and the Oxford Manual of 1880 are examples of such codification.

Godfrey Lushington's Manual of Naval Prize Law, prepared for the British navy in 1866, furnished a basis for subsequent codification. The Manual was revised and amplified by Prof. Holland in 1888 and has subsequently been revised.

Such codifications showed that definite statements in regard to the conduct of hostilities might be formulated. The demand for formulation and definition of rights of belligerents and of neutrals became more imperative.

Restrictions and First Hague Conference, 1899.—Besides the proposal to limitation of armaments, the Czar's circular of January 11, 1899, suggested the interdiction of new firearms, new explosives, as well as powder more powerful than then in use, the limitation of certain formidable explosives, and of the discharge of projectiles from air craft, the prohibition of submarine mines and boats, and the prohibition of the use of rams. The subjects were considered at the Conference of 1899.

The Hague convention of 1899, concerning the laws and customs of war on land, provided:

ART. 22. The right of the belligerents to adopt means of injuring the enemy is not unlimited.

This same article was reaffirmed in the conference of 1907.

Both Conferences also declared it prohibited "Art. 23 (e) To employ arms, projectiles, or material of a nature to cause superfluous injury." While these restrictions were drawn primarily to apply to war on land, yet it has

been maintained that the principles apply to maritime warfare.

The contracting states agreed at the Conference of 1899 "to prohibit for a term of five years the discharge of projectiles and explosives from balloons or by other new methods of a similar nature." This agreement expired while the Russo-Japanese war was in progress, but neither power took advantage of this fact. The declaration was renewed at the conference of 1907, to continue for a period extending to the close of the Third Peace Conference.

The improvement in systems of aerial navigation are so great that it is doubtful whether this declaration will be renewed. The declaration was conceived as one which would mitigate the horrors of war, in the same spirit as the Declaration of St. Petersburg of 1868. If projectiles can be discharged from balloons with no risk beyond the ordinary war risk, it is maintained that there is no reason for the prohibition of such discharge. That projectiles should not be launched from balloons against undefended or unfortified places would accord with the present laws of war and would prevail even if there were no convention in regard to balloons.

The proposition that aerial warfare be prohibited altogether, as being a first practical step toward the limitation of armaments, was not sufficiently supported to secure adoption in 1907, and since that time much effort has been devoted to the improvement of air craft. Few large states have ratified the declaration prohibiting the discharge of projectiles and explosives from balloons. Among the states that have ratified the declaration are the United States, Great Britain, and France. Like the other conventions, this declaration is not binding except among contracting states. Italy made use of air craft in the war with Turkey in Tripoli. Most of the large states have constituted aerial corps in connection with their other forces.

The Hague Conference of 1899 agreed upon a declaration prohibiting the use of projectiles, the sole object of

which is the diffusion of asphyxiating or deleterious gases.

The declaration has not been signed by the United States, though it has been signed by the other States represented at the First Hague Conference. The American delegation at the First Hague Conference, 1899, opposed this declaration, and Capt. (Admiral) Mahan states these reasons:

These reasons were, briefly: 1. That no shell emitting such gases is as yet in practical use or has undergone adequate experiment; consequently, a vote taken now would be taken in ignorance of the facts as to whether the results would be of a decisive character or whether injury in excess of that necessary to attain the end of warfare—the immediate disabling of the enemy—would be inflicted. 2. That the reproach of cruelty and perfidy, addressed against these supposed shells, was equally uttered formerly against firearms and torpedoes, both of which are now employed without scruple. Until we knew the effects of such asphyxiating shells, there was no saying whether they would be more or less merciful than missiles now permitted. 3. That it was illogical, and not demonstrably humane, to be tender about asphyxiating men with gas, when all were prepared to admit that it was allowable to blow the bottom out of an ironclad at midnight, throwing four or five hundred into the sea, to be choked by water, with scarcely the remotest chance of escape. If, and when, a shell emitting asphyxiating gases alone has been successfully produced, then, and not before, men will be able to vote intelligently on the subject. (Holls' Peace Conference, p. 494.)

To these reasons of Admiral Mahan might be added the fact that even when projectiles may discharge gases which may be deleterious or asphyxiating, it is very difficult to prove that this is the "sole object" of the discharge. The lyddite shells which have been used diffuse asphyxiating gases, but that is not the sole object in the use of this high explosive, and its use is not regarded as contrary to law. The same has been said in regard to melinite and roburite.

Another restrictive declaration of the First Hague Conference, 1899, related to bullets with a hard envelope. In this declaration "the contracting parties agree to abstain from the use of bullets which expand or flatten easily in the human body, such as bullets with a hard en-

velope which does not entirely cover the core or is pierced with incisions."

This declaration, also, the United States has not signed, though the other 25 States represented at the Conference have signed. The United States opposed the form rather than the purpose of the declaration.

Torpedoes.—Torpedoes were objected to in early days of their use as contrary to the principles of humane warfare. It was claimed that these constituted a hidden danger, to which an enemy should not be exposed. The subject of regulation of the use of torpedoes has been generally considered with that of the use of submarine mines with which in many respects, except that of movement in a certain direction, they are similar. The discussion of the principles relating to torpedoes may, therefore, be coupled with that of mines.

Mines.—The Naval War College in 1905, International Law Topics, Topic VIII, pages 147 to 153, gave attention to the general subject of use of mines, and International Law Situations of 1908, Situation V, pages 98 to 113, gave considerable attention to the use of mines for blockading purposes. The discussion of the conference in 1908 seemed to lead to the conclusion that mines should not be used for the maintenance of a strictly commercial blockade.

Report to Hague Conference, 1907.—The reporter of the committee having in charge the question of formulation of regulations for the use of mines at The Hague in 1907 said, in regard to submarine mines:

Les principes unanimement acceptés peuvent être résumés comme suit:

(1) Il y a une distinction fondamentale à faire entre les mines automatiques de contact amarrées et les mines non-amarrées; ces dernières peuvent être employées partout, mais elles doivent être construites de façon à devenir inoffensives dans un laps de temps extrêmement limité; il doit en être de même des torpilles, qui ont manqué leur but.

(2) Quant aux mines amarrées, une limitation est nécessaire dans l'espace, c'est-à-dire concernant les lieux où il sera loisible de les placer. Mais,

(3) Comme cette limitation ne peut pas être absolue et comme, dans tous les cas, elle n'exclut pas la possibilité de placer des

mines amarrées là où la navigation pacifique doit pouvoir compter sur une libre circulation, il faut, ici encore, avoir recours à une limitation dans le temps, c'est-à-dire à une limitation du temps, pendant lequel la mine est dangereuse, ce qui serait possible, grâce aux inventions techniques modernes. On a également pu décider unanimement :

Que toute mine amarrées doit être construite de façon à devenir inoffensive dans le cas où, rompant ses amarres, elle irait flotter librement.

Par cette heureuse combinaison des limitations apportées quant à l'espace, avec les conditions techniques, que nous venons de mentionner, un progrès très sensible a été effectué sur l'état actuel des choses. A plusieurs reprises on fit notamment ressortir le grand progrès que constituerait, vis-à-vis de la situation actuelle, l'obligation d'employer des mines amarrées, qui deviennent inoffensives aussitôt qu'elles auraient rompu leurs amarres.

(4) Ces dispositions sont encore complétées par des règles, également votées à l'unanimité et établissant l'obligation des États, qui emploieraient des mines amarrées, non seulement de prendre toutes les mesures de précautions possibles, notamment en signalant les régions dangereuses (article 6) mais aussi d'enlever, à la fin de la guerre, les mines amarrées qu'on aurait placées et, en tout cas, de pourvoir, dans la mesure du possible, à ce que les mines employées deviennent inoffensives après un laps de temps limité, afin qu'elles ne restent pas dangereuses longtemps après la fin de la guerre.

(5) Enfin, des dispositions transitoires, engageant à appliquer ces règles de plus tôt possible et donnant, en même temps les délais nécessaires pour la transformation du matériel existant, ainsi que le vœu de voir reprendre la question, avant l'expiration du terme, forcément assez court, pour lequel la convention pourrait être conclue ont pu rallier l'assentiment général des États représentés au Comité d'Examen. (Deuxième Conférence de la Paix, Tome III. p. 376.)

There was a marked difference of opinion in regard to the use of submarine mines, some States favoring an extreme limitation, others a wide freedom.

Germany.—The German delegation at The Hague Conference in 1907 opposed the British idea of limitation as being too strict. Marschall de Bieberstein said :

La Délégation allemande s'est vue dans la nécessité de s'opposer à une grande partie des dispositions visant à restreindre l'emploi des mines. Je tiens à expliquer en peu de mots la portée de nos réserves et notamment à défendre notre attitude contre cette interprétation qu'à l'exception des restrictions que nous acceptons, nous demandons une liberté illimitée pour l'emploi de

ces engins. Nous n'avons pas l'intention, pour me servir d'une expression de M. le Délégué de Grande-Bretagne "de semer à profusion des mines dans toutes les mers."

Ce n'est pas le cas. Nous ne sommes pas d'avis que tout ce qui n'est pas expressément prohibé, est permis.

Un belligérant qui pose des mines, assume une responsabilité très lourde envers les neutres et la navigation pacifique. Sur ce point nous sommes tous d'accord. Personne n'aura recours à ce moyen sans des raisons militaires absolument urgentes. Or, les actes militaires ne sont pas régis uniquement par les stipulations du droit international. Il y a d'autres facteurs : la conscience, le bon sens et le sentiment des devoirs imposés par les principes de l'humanité seront les guides les plus surs pour la conduite des marins et constitueront la garantie la plus efficace contre des abus. Les officiers de la marine allemande, je le dis à voix haute, rempliront toujours, de la manière la plus stricte, les devoirs qui découlent de la loi non-écrite de l'humanité et de la civilisation.

Je n'ai pas besoin de vous dire que je reconnais entièrement l'importance de la codification des règles à suivre dans la guerre. Mais il faut bien se garder d'édicter des règles dont la stricte observation pourrait être rendue impossible par la force des choses. Il est de première importance que le droit international maritime que nous voulons créer ne contienne que des clauses dont l'exécution est militairement possible, même dans des circonstances exceptionnelles. Autrement le respect du droit serait amoindri et son autorité serait ébranlée. Aussi nous paraît-il préférable de garder à présent une certaine réserve en attendant que dans cinq ans on soit mieux en mesure de trouver une solution qui soit acceptable pour tout le monde.

Mais pour donner la preuve sérieuse que la Délégation allemande contribuera volontiers à toutes les mesures acceptables qui peuvent rassurer l'opinion publique, elle se déclare prête à interdire pour cinq ans, c'est-à-dire pour la durée de cette convention, tout emploi de mines non-amarrées. Elle propose donc de remplacer l'alinéa 1 du premier article par les mots : "Il est interdit pour une durée de cinq ans de placer des mines automatiques de contact non-amarrées. (Ibid., p. 382.)

Discussion at The Hague, 1907.—The discussion at The Hague in 1907 and the votes showed a wide divergence of opinion upon the subject of regulating the use of mines. China pointed out that many ships, with their crews, had been lost in waters about China by reason of mines which had been placed during the Russo-Japanese War and that unanchored mines formed a dangerous menace to peaceful shipping.

The report of the committee said:

D'un autre côté, l'on devait se rendre compte du fait incontestable, que les mines sous-marines constituent un moyen en guerre, dont on ne saurait ni espérer ni peut-être désirer, dans l'intérêt même de la paix, la prohibition absolue: moyen surtout de défense, peu coûteux et très efficace, extrêmement utile pour protéger des côtés étendus et propre à épargner des dépenses considérables qu'exige l'entretien de grandes marines de guerre. Certes, la défense idéale des côtes, la défense qui ne peut jamais produire de dommage aux navires pacifiques, est celle que l'on obtient par des mines fixes qui éclatent au moyen de l'électricité. Mais l'emploi de pareilles mines est nécessairement limitée à la proximité de la terre, et là encore il n'est pas toujours possible ni suffisant. C'est dire que les mines automatiques de contact sont une arme indispensable. Or, viser à une prohibition absolue de cette arme, serait par conséquent demander l'impossible; il faut se borner à en réglementer l'emploi. (Ibid., p. 398.)

Hague convention, 1907.—At the Second Hague Conference a convention was adopted relative to the laying of automatic contact submarine mines. The essential regulations of this convention are as follows:

ARTICLE I. It is forbidden:

1. To lay unanchored automatic contact mines, except when they are so constructed as to become harmless 1 hour at most after those who laid them have lost control of them;

2. To lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings;

3. To use torpedoes which do not become harmless when they have missed their mark.

ART. 2. It is forbidden to lay automatic contact mines off the coast and ports of the enemy, with the sole object of intercepting commercial shipping.

ART. 3. When anchored automatic contact mines are employed, every possible precaution must be taken for the security of peaceful shipping.

The belligerents undertake to provide, as far as possible, that these mines shall become harmless within a limited time, and, should they cease to be under surveillance, to notify the danger zones as soon as military exigencies permit by a notice to mariners, which must also be communicated to the Governments through the diplomatic channel.

ART. 4. Any neutral power which lays automatic contact mines off its coasts must observe the same rules and take the same precautions as are imposed on belligerents.

The neutral power must inform mariners by a notice issued in advance, where automatic contact mines will be laid. This notice must be communicated at once to the Governments through the diplomatic channel.

ART. 5. At the close of the war the contracting powers undertake to do their utmost to remove the mines which they have laid, each power removing its own mines.

As regards anchored automatic contact mines laid by one of the belligerents off the coast of the other, their position must be notified to the other party by the power which laid them and each power must proceed with the least possible delay to remove the mines in its own waters.

ART. 6. The contracting powers which do not at present own perfected mines of the type contemplated in the present convention and which, consequently, could not at present carry out the rules laid down in articles 1 and 3, undertake to convert the matériel of their mines as soon as possible, so as to bring it into conformity with the foregoing requirements.

The report of the commission of The Hague Conference which had the matter of submarine mines under consideration admitted that it had not reached more than a tentative and conditional conclusion.

The position of the Naval War College on the use of mines, as set forth in the International Law Topics of 1905, pages 147 to 153, was presented to The Hague Conference (*Deuxième Conférence de la Paix, Tome III, p. 384-387*). This position was stated in the War College conclusion in 1905 as follows:

1. Unanchored contact mines are prohibited, except those that by construction are rendered innocuous after a limited time, certainly before passing outside the area of immediate belligerent activities.

2. Anchored contact mines that do not become innocuous on getting adrift are prohibited.

3. If anchored contact mines be used within belligerent jurisdiction or within the area of immediate belligerent activities, due precaution shall be taken for the safety of neutrals. (*International Law Topics, 1905, p. 147.*)

Limitations of convention relative to submarine mines.—It should be pointed out that the convention negotiated at The Hague in 1907 places practically no restriction upon the use of mines by states which have not mines of late models which conform to the requirements of the convention. Under such circumstances it is diffi-

cult to prohibit the use of any kind of a mine by a state because no inventory of mines possessed by different states has been made.

The restriction purporting to prohibit commercial blockade by mines can be easily evaded by alleging other reasons, which might in most cases exist.

Besides, several of the great powers have made reservations in regard to this convention which limit its operation.

There is no regulation in regard to the laying of mines in straits. Straits are supposed to be open to innocent passage of neutral ships. If the area of jurisdiction of marginal sea is increased the jurisdiction over wider areas in the nature of straits is granted and a possibility of more extended use of mines arises.

Institute of International Law, 1910-13.—The Institute of International Law considered the question of regulation of the use of mines at the session at Paris in 1910 and at Madrid in 1911. The vote of the Institute finally enunciated the following articles as suitable for the regulation of the use of mines:

A.—ARTICLES VOTÉS À PARIS.

ARTICLE 1. Il est interdit de placer en plein mer des mines automatiques de contact, amarrées ou non, la question des mines à commande électrique étant réservée.

ART. 2. Les belligérants peuvent placer des mines dans leurs eaux territoriales et dans celles de l'ennemi.

Mais il leur est interdit, même dans ces eaux territoriales:

1°. De placer des mines automatiques de contact non amarrées, à moins qu'elles ne soient construites de manière à devenir inoffensives, une heure au maximum après que celui qui les a placées en aura perdue le contrôle.

2°. De placer des mines de contact amarrées qui ne deviennent pas inoffensives dès qu'elles auront rompu leurs amarres.

ART. 3. Il est interdit de faire usage, aussi bien dans les eaux territoriales qu'en pleine mer, de torpilles qui ne deviennent pas inoffensives lorsqu'elles auront manqué leur but.

ART. 4. Un belligérant ne peut placer des mines devant les côtes et les ports de son adversaire que pour des buts navals et militaires. Il lui est interdit de les y placer pour établir ou maintenir un blocus de commerce.

ART. 5. Lorsque les mines automatiques de contact, amarrées ou non amarrées, sont employées, toutes les précautions doivent être prises pour la sécurité de la navigation pacifique.

Les belligérants pourvoiront notamment à ce que les mines deviennent inoffensives après un laps de temps limité.

Dans le cas où les mines cesseraient d'être surveillées par eux, les belligérants signaleront les régions dangereuses, aussitôt que les exigences militaires le permettront, par un avis à la navigation qui devra être aussi communiqué aux Gouvernements par la voie diplomatique.

B.—ARTICLES VOTÉS À LA SESSION DE MADRID DE 1911.

ART. 6. L'État neutre peut placer des mines dans ses eaux territoriales pour la défense de sa neutralité. Il doit, en ces cas, observer les mêmes règles et prendre les mêmes précautions que celles qui sont imposées aux belligérants.

L'État neutre doit faire connaître à la navigation par un avis préalable les régions où seront placées les mines automatiques de contact. Cet avis devra être communiqué d'urgence aux Gouvernements par la voie diplomatique.

ART. 7. La question du placement de mines dans les détroits est réservée, tant en ce qui concerne les neutres que les belligérants.

ART. 8. A la fin de la guerre, les États belligérants et neutres feront tout ce qui dépend d'eux pour enlever, chacun de son côté, les mines qu'ils auront placées.

Quant aux mines automatiques de contact amarrées que l'un des belligérants aurait laissées sur les côtes de l'autre, l'emplacement en sera notifié à l'autre partie par l'État qui les aura posées, et chaque État devra procéder, dans le plus bref délai, à l'enlèvement des mines qui se trouvent dans ses eaux.

Les États belligérants et neutres auxquels incombe l'obligation d'enlever les mines après la fin de la lutte devront faire connaître la date à laquelle l'enlèvement de ces mines sera terminé.

ART. 9. La violation d'une des règles qui précèdent entraîne la responsabilité de l'État fautif.

L'État qui a posé la mine est jusqu'à preuve contraire présumé fautif.

Cette responsabilité pourra être mise en jeu, même par des particuliers, devant le tribunal international compétent. (Annuaire de Droit International, vol. 24, pp. 301, 302.)

The Institute of International Law also considered the question of regulation of the use of mines in the session of 1913. A project had been laid before the Institute in 1912 in practically the same form as the rules voted in 1911. In 1913 question was particularly raised in

regard to the text which appeared as article 8 in 1911 and as article 27 of the manual proposed in 1913.

The discussion of this article led to an amendment. The report says:

L'alinéa final disait: "Les États belligérants auxquels incombe l'obligation d'enlever les mines après la fin de la lutte devront faire connaître la date à laquelle l'enlèvement de ces mines sera terminé." Les derniers mots de cette disposition étaient amphibologiques. Quelle est exactement la notification prescrite par l'alinéa? Les États sont-ils tenus d'annoncer à l'avance que l'enlèvement des mines sera terminé d'ici tel ou tel délai; ou leur suffit-il, une fois que cet enlèvement a été terminé, de faire connaître qu'il en est ainsi? M. Hagerup a donc demandé que le texte soit corrigé de manière qu'il ne puisse plus prêter à discussion. La Commission s'est rangée à l'opinion de M. Hagerup, malgré les réserves que M. Edouard Rolin Jaequemyns a cru devoir faire sur la compétence de la Commission pour faire subir un changement à une résolution aussi récemment votée par l'Institut: elle a estimé qu'il s'agissait ici d'un éclaircissement et non d'une modification.

Quel sens convenait-il de donner au texte de l'article 27? Deux propositions ont été, à cet égard, soumises à la Commission. L'une, présentée par MM. Holland et Kaufmann, imposait aux puissances une double notification: notification pour faire connaître le commencement et le délai approximatif de l'enlèvement des mines, notification pour annoncer que l'enlèvement est effectivement terminé. L'autre, libellée par M. Hagerup, n'exigeait des Puissances qu'une seule notification, une fois que l'enlèvement des mines est terminé. C'est cette dernière proposition que la Commission a adoptée. Il lui a paru que la notification d'un délai approximatif pour l'enlèvement des mines serait plus dangereuse qu'utile: l'État qui fait connaître son intention de procéder à l'enlèvement des mines dans un certain délai ne peut, en effet, jamais savoir, à raison des difficultés inhérentes à cet enlèvement, si effectivement il aura lieu au terme indiqué: en attendant, et malgré la notification, la navigation demeurera donc périlleuse. Il serait bon, cependant, que les États ne fassent pas trop longtemps attendre l'enlèvement des mines: pour bien marquer cette idée, MM. Paul Fauchille et Hagerup avaient proposé de dire que "les États auxquels incombe l'obligation d'enlever les mines après la fin de la lutte devront faire connaître *la date* à laquelle l'enlèvement des mines *est* terminé"; en imposant l'indication de *la date*, on saura si la notification a suivi immédiatement l'enlèvement des mines et s'il a été procédé à celui-ci assez tôt après la fin de la lutte. Mais M. Edouard Rolin Jaequemyns a fait observer que les mots "*la date*" se réfèrent plutôt au futur qu'au passé. La Commission a, dès lors, décidé d'inscrire simplement que la

notification sera faite "dans le plus bref délai possible" et qu'elle indiquera que l'enlèvement des mines aura été terminé "dans la mesure du possible." La rédaction de l'alinéa votée par la Commission a, en conséquence, été la suivante: "Les États belligérants auxquels incombe l'obligation d'enlever les mines après la fin de la lutte devront, dans le plus bref délai possible, faire connaître que l'enlèvement de ces mines a été terminé dans la mesure du possible.

In 1911 the regulation of the use of mines controlled by electricity was reserved. In 1913 mines of this class were not mentioned.

Résumé.—The discussions at the Naval War College in previous years and printed in the *International Law Situations*, 1905, pages 147 to 153, and 1908, pages 98 to 113, furnish a general view of the subject. The discussions at The Hague show the views of various states and the conclusions of the Conference of 1907. The propositions before the Institute of International Law and the discussions upon these show the progress of opinion, which seems to be toward greater restrictions. The movement in this direction seems also to be sanctioned by the representations made by governments from time to time.

The general attitude seems to be that, while war must be pursued vigorously, the effects should be such as conduce to the military end and that the conduct of war should be, with all regard for life and property, consistent with military necessity. Certain rules have been generally approved; others are in the process of development.

Conclusion.—Having regard to the regulations adopted at The Hague and to regulations which have seemed to meet wide approval, the following regulations in regard to means of injuring the enemy in maritime war may be suggested:

Means of injuring the enemy:

1. "The right of belligerents to the choice of means of injuring the enemy is not unlimited."

2. It is forbidden—

(a) To employ poison or poisoned weapons or projectiles whose sole object is the diffusion of asphyxiating or deleterious gases.

(b) To employ arms, projectiles, or material of a nature to cause unnecessary suffering.

3. Torpedoes and mines:

(a) It is forbidden to use torpedoes which do not become harmless when they have completed their run.

(b) It is forbidden to lay mines in the high seas except within the immediate area of belligerent operations.

(c) It is forbidden in the high seas and in marginal waters of the belligerent (1) to lay unanchored automatic contact mines except when they are so constructed as to become harmless one hour at most after those who laid them have lost control of them; (2) to lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings.

(d) A belligerent is forbidden to lay mines off the coast or before the ports of the enemy except for strictly military or naval purposes.

It is forbidden to lay mines in order to establish or to maintain a commercial blockade.

(e) When mines are employed every possible precaution must be taken for the security of peaceful shipping.

The belligerents undertake to provide as far as possible that these mines shall become harmless within a limited time, and, should they cease to be under surveillance, to notify the danger zones as soon as military exigencies permit by a notice to mariners, which must also be communicated to the governments through the diplomatic channel.

(f) At the close of the war the belligerent states undertake to do their utmost to remove the mines which they have laid, each state removing its own mines.

As regards anchored automatic contact mines laid by one of the belligerents off the coast of the other, their position must be notified to the other party by the state which laid them, and each state must proceed with the least possible delay to remove the mines in its own waters.

The belligerent states upon which the obligation to remove the mines falls after the end of the war should as soon as possible give notice that the mines have so far as possible been removed.